

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLEN D NYE,

Defendant.

2:05-CR-209 JCM (PAL)

Related Case 2:09-CV-2027 JCM (RJJ)

ORDER

Presently before the court is defendant Allen D. Nye's motion for district judge to reconsider. (Doc. # 112). Also before the court is Assistant Public Defender Jason F. Carr's memorandum in support of Nye's motion to reconsider docket sheet order #112. (Doc. 116).

On January 29, 2010, this court entered an order (doc. #112) denying the defendant's motion to vacate under 28 U.S.C. § 2255 (doc. #109). In the order, the court held that the defendant's motion was untimely, due to the fact that he had not filed the motion until 10 months after the judgment became final. In both the defendant's motion to reconsider, and in the memorandum of Jason F. Carr, they assert that the court made an error in its calculations.

Under 28 U.S.C. § 2255, section (f)(1) states, that "a 1-year period of limitation shall apply to a motion under this section," and that "[t]he limitation period shall run from the ... date on which the judgment of conviction becomes final." The court in *Clay v. United States*, 537 U.S. 522, 527 (2003) held that "finality attaches when this court affirms a conviction on the merits on direct review or denies a petition for writ of certiorari, or when the time for filing a certiorari petition expires."

This court recognizes that defendant's conviction and sentence was affirmed by the United

1 States Court of Appeals for the Ninth Circuit on August 21, 2008. He then had a ninety-day (90)
2 period in which he could have filed a petition for certiorari. Upon the expiration of that time period,
3 November 19, 2008, defendant's conviction became final. Thereafter, the *one year* statute of
4 limitations began to run, giving him a deadline of November 19, 2009.

5 In light of the above facts, this court finds that the defendant's motion under §2255, filed on
6 October 16, 2009, was timely. Thus, this court is inclined to grant the motion to reconsider. (Doc.
7 #112).

8 Accordingly,

9 IT IS HEREBY ORDERED ADJUDGED AND DECREED that defendant's motion for
10 district judge to reconsider (doc. #112) be, and the same hereby is, GRANTED.

11 IT IS FURTHER ORDERED that respondent file a response to the motion within fifteen (15)
12 days from this order.

13 DATED this 29th day of September, 2010.

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16 UNITED STATES DISTRICT JUDGE
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